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Fempower

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Editorial

by Iris Golden, WAVE office, Austria

ANTI - VIOLENCE LEGISLATION IN EUROPE

An adequate anti-violence legislation, responding to the needs of women threatened by violence, taking the human rights of women seriously, is a precondition for successfully fighting against gender based violence. What are then the requirements of such anti-violence legislation? According to a Report of the United Nations Special Rapporteur on Violence against women[1] from 1996, some of the criteria for an appropriate anti-violence legislation include:

- Use of the broadest possible definitions of acts of domestic violence and for relationships within which domestic violence occurs;

- Inclusion of complaints mechanisms and duties of police officers, including that the police must respond to every request for assistance and protection in cases of domestic violence and explain to the victims their legal rights;

Content

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Editorial-Continuation

by Iris Golden, WAVE office, Austria

Iris Golden
on behalf of the WAVE TEAM. Iris Golden is editor of Fempower and WAVE project co-ordinator.

Email: iris.golden@wave-network.org

- Restraining orders and protection orders;

- Both criminal and civil law measures, and

- Provision of support services for victims, programmes for perpetrators and training for police and judicial officials.

International and European legal instruments also set minimum standards which State Parties to these instruments are required to comply with. The comprehensive Council of Europe Convention on preventing and combating violence against women and domestic violence ("Istanbul Convention"), which will enter into force once ten countries will have ratified it, includes a comprehensive set of State responsibilities, among others, to install the necessary legal measures regarding preventive intervention and effective cooperation of all actors, access to services, the availability of shelters and helplines, civil remedies, access to compensation, the criminalization of all forms of violence against women, including psychological violence, stalking, physical violence, sexual violence. The Convention includes also a provision requiring an effective investigation, and obliges the State Parties to offer emergency barring orders, restraining and protection orders. Also, the rights of victims (also in their role as witnesses) during legal procedures (criminal and civil) should be protected.

EU member States are in addition obliged to implement the standards set by relevant EU legislation, most importantly, the Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime and the Directive 2011/99/EU on the European Protection Order[2].

The first issue of Fempower of this year focuses on specific issues regarding anti-violence legislation in selected European countries: The articles give an overview over the achievements and gaps, the strengths and the weaknesses in anti-violence legislation, but also of their implementation in various European Countries, and presents the - subjective - views, which may appear controversial to some,[3] on various approaches: In the first article, Bárbara Tardón from the organization "Aspacia" (Spain) presents the Violence against Women Courts introduced by an Anti-violence Act from 2004, and the experiences of her organization with the functioning of those courts. The second article by Iris Golden from the WAVE office offers a description and analysis of the main features of the Austrian anti-violence legislation and its implementation. The third article by Mirjam Nobel from Steunpunt Huiselijk Geweld focuses on the approach of her organization to the temporary restraining orders, as provided by the respective Law in the Netherlands. Furthermore, Tanja Ignjatovic and Danijela Pesic from the Autonomous Women's Center Belgrade provide an overview of the legal anti-violence framework and its implementation in Serbia, also stressing the importance of ratifying the Istanbul Convention and to adapt the legislation to its standards. Carlijn Weijns from Blijf Group (The Netherlands) describes and analyses the project of a Dutch law, expected to enter into force this year, and which will require organizations and independent professionals assisting victims of violence to adhere to a "code" for reporting domestic violence. Finally, Paula Hardy and Hannah Austin from Welsh Women's Aid (UK) present a very promising Domestic Abuse Bill, which has incorporated many of the priorities set by the Violence against Women's organizations in Wales, and the remaining challenges of this law proposal. And lastly, Angelika Kartusch presents the UN Convention on the Elimination of all Forms of Discrimination against women (CEDAW) as a frame-work of legislative reform to eliminate violence against women.

[1] Report of the Special Rapporteur on violence against women, its causes and consequences (1996) a framework on model legislation, E/CN.4/1996/53/Add.2, cited in United Nations, Background Paper for the Expert Group meeting on good practices in legislation on violence against women (2008).

[2] The term and concept of "Protection Order" is not used in a uniform way in national jurisdictions: Various synonyms, such as "restraining order", "injunction orders" are in circulation. See van der Aa, protection Orders in the European Member States: Where Do We Stand and Where Do We Go from Here?, in Eur J Crim Policy Res; published online on 17 December 2011.

[3] The articles are meant to reflect the multiple spectrum of approaches adopted by various organizations working in the field of violence against women, which may not necessarily reflect the opinion of WAVE.

ASSESSMENT OF A LAW THAT PAVED THE WAY - MEASURES TO OFFER COMPREHENSIVE PROTECTION AGAINST VIOLENCE AGAINST WOMEN, ORGANIC ACT 1/2004

by Bárbara Tardón Recio, Spain

In January of 2005, Spain made history in its fight against violence against women. For the first time since the start of the Spanish Transition (1975), after 40 years of brutal dictatorship, one of women's groups` and the Spanish feminist movement's most important demands was approved unanimously by the Spanish Parliament: Measures to Offer Comprehensive Protection against Violence Against Women, Organic Act 1/2004. This specific law was to "act against violence that, as a manifestation of discrimination, a situation of inequality and the power relationships men hold over women, is carried out against those who are or who have been their husbands, or those who are or have been connected to them through similar bonds of intimacy, living

together or apart" (Section 1.1). No political party, regardless of political leanings, stood in the way of its approval.

Giant steps have been made since January 2005, but legal loopholes have been found and specific actions are still as-of-yet undeveloped and their execution according to the act is pending. The major obstacles women face, fruits of a patriarchal legal system and a society still deeply rooted in historical sexist prejudices and myths, often turn the victims into suspects and makes it impossible for the law to accomplish its aim: to offer victims the right to justice and protection, as provided for in the international regulations signed and ratified by Spain and as claimed for by the community.

The creation of specific tribunals - Violence Against Women Courts – was one of the most important measures included in the law and marked a new era in access to justice for women who had experienced gender-based violence from their partners or ex-partners. (The comprehensive Act only covers gender-based violence in intimate relationships, ignoring other forms of violence towards women (like female genital mutilation, sexual violence outside the partner or ex-partner relationship, "honor" crimes, trafficking of women, etc.). It made it possible to bring to court the all too daily violations of human rights that partner violence constitutes, in tribunals specifically opened for that purpose.[1]

It is clear that for women and their families and the professional teams supporting them, those criminal tribunals for violence against women cases are perceived as real spaces of legal protection. Under the watchful eye and helpful hands of specialists in the field (lawyers, judges, public attorneys…), theory and experience are combined to make these courts supportive and empathetic places from a gender perspective, enabling them to protect and heal the victims as soon as possible. In this sense their mere existence, the people working there and how these courts are structured, is truly a great achievement.

Since 2005 the courts have been applauded by women, and they have become a benchmark for professionals, and notorious in the eyes of aggressors who now know that they will be tried by courts specialized in the crime of partner violence against women.

The numbers speak for themselves: According to statistics released by the Observatory Against Gender-Based and Domestic Violence, in the General Council of the Spanish Judicial Authority[2], evidence has been collected for a total of 963,471 crimes from June 2005 to June 2012. 605,966 criminal precautionary protection measures have been taken. 236,686 restraining orders have been placed; 199,413 bans on communications with the victim(s) have been ordered; 44,433 injunctions on returning to the scene of the crime have been made; 42,315 suspensions of the right to possess or use weapons have been ruled; 39,885 kick-out orders and 19,066 incarcerations were enacted.

These numbers, however, only reflect a small part of what still needs to be done. In Spain, the average number of women killed each year (including only those who die at the hands of their partners or ex-partners) hits 70 at its worst, but is just the tip of the iceberg when it comes to the atrocity of violence towards women and their children. The specialized courts are still far from giving a victim of constant infringement of her human rights the answer she deserves and is due, for justice, ethics and social responsibility's sake.

Bárbara Tardón Recio

is an Advocacy coordinator at Asociación para la Convivencia Aspacia. Madrid. She holds a PhD. in Gender Studies and Contemporary History and a Master in International Protection of Human Rights. Over the last few years she has been working as project coordinator for different NGOs, working in prostitution, immigration and women's human rights. Her work focuses on the need to apply the perspective of human rights to programmes aimed at gender violence victims, regarding the responsibility of the State in the exercise of "due diligence".

Email: barbara.tardon@asociacion-aspacia.org

We see it every day in Aspacia when women, after taking the step to face their abuser – who is sometimes the father of their children - and sue him, are victimized again by judges that ironically even working in specialized courts are still lacking any background in gender- or feminist theory. We experience it every day when we accompany migrant women to court and they sit in front of their abuser, without a simultaneous interpreter, afraid of making any false moves that could lead to their deportation. We witness every day that women who have been threatened, abused and assaulted sexually by someone who is not their partner or ex-partner is unable to access the specialized courts because they slip through the lines of the law's wording. And we keep seeing it every day with many examples of lawsuits that go nowhere or rulings that acquit the abusers despite conclusive proof and evidence.

Prestigious organizations like Amnesty International[3] openly report what Aspacia sees on a regular basis: Seven years after the Specialized Courts were put in place, the number of cases that are not admitted to legal proceedings is alarming. For instance, in 2011 more than 45% of all the complaints from all over Spain were shelved.

With those kinds of statistics, it is hard for women victims of partner violence to uphold the perception of the courts as areas where they are protected. In fact, it is quite the opposite: they are likely to see them as dangerous places, places that they have to be afraid of and places at which they would never think to place a complaint, prolonging their suffering from the threat of their assailant.

[1] The Comprehensive Act 1/2004 established the Violence Against Women´s Courts as specialized bodies competent in advising criminal cases on crimes related to gender based violence. In Spain there are 463 courts.

[2] El Observatorio informa. Balance de siete años de la creación de los Juzgados de Violencia sobre la Mujer (2005-2012). Observatorio contra la violencia Doméstica y de Género.

[3] "Qué justicia especializada". A siete años de la Ley integral contra la Violencia de Género: Obstáculos al acceso y obtención de justicia y protección. Amnistía Internacional. 2012.

Iris Golden
holds a doctoral degree in law and an LL.M. with a focus on international human rights law. Prior to working for WAVE, Iris has worked as a research assistant at the Institute of Public and Administrative Law (2001-2005), as a research assistant and Coordinator of two human rights commissions of the Human Rights Advisory Board in the Austrian Ministry of the Interior (2006-2008), and as a legal staff member of the Austrian Constitutional (2008-2011). She works with WAVE since March 2012 as a project coordinator.

Email: iris.golden@wave-network.org

A CHANGE OF PARADIGM: AUSTRIAN ANTI-VIOLENCE LEGISLATION

by Iris Golden, Austria

Since 1 May 1997, Austria has a comprehensive set of legal tools to fight violence in the domestic sphere, including gender based violence: The Anti-Violence Act „Gewaltschutzgesetz, Bundesgesetz zum Schutz vor Gewalt in der Familie", BGBl. Nr. 759/1996. Since then, there have been some amendments, especially regarding the Security Police Act (Sicherheitspolizeigesetz, BGBl. Nr. 566/1991), and the Enforcement Proceedings Act (Exekutionsordnung – EO, RGBl. Nr. 79/1896). On 1 June 2009, the legal Anti-Violence protection has been substantially extended in the frame of the Second Anti-Violence Act (BGBl. Nr.40/2009), where the protection measures have been improved in many regards. Most importantly, the periods of protection were increased (2 weeks instead of 10 days for the police barring order, 1 year for the court injunction order). Other changes include the introduction of new offences into the Penal Code (Strafgesetzbuch – StGB), for example the "Continued exercise of violence" ("Fortgesetzte Gewaltausübung", § 107b StGB).[1] Furthermore, the second Anti-Violence act provided for the improvement of the procedural rights of victims (not disclosing the address of the victim, possibility of a "gentle" interrogation in the civil law process linked to the criminal procedure; the extension of the psychosocial process-assistance to civil law processes). Additionally, in cases where the victim qualifies for legal aid, she is also entitled to legal assistance throughout the legal process.

Accordingly, the main elements of Austrian Anti-Violence Legislation are, firstly, the eviction of the perpetrator and the barring orders for the living space (including its immediate surroundings) of the endangered person executed directly by the police for a period from of two up to four weeks (as provided by § 38a Police Security Act), secondly, the longer protection through a temporary injunction issued by civil courts, and thirdly, the proactive support for the victims by Intervention Centers against Violence/ Anti-Violence Centers.

Currently, the Security Police Act is again under revision, in order to extend the protection, especially to children, but also to their mothers. It is proposed that the barring orders provided for in § 38a Security Police Act can be issued also to cover schools, childcare institutions and after school care clubs, including a space of 50 m surrounding these premises, if the endangered person is a child under 14 years of age. The bill also proposes the obligation to inform the youth welfare institutions and, the head of the school or child care institution to which a barring order has been extended to.[2]

1) The approach of the Austrian Anti-Violence Legislation

In summary, the Austrian Framework of Anti-Violence Protection follows the following lines:

• Domestic Violence (and Gender Based Violence) as a human rights violation

This is a very important step and marks a change of paradigm: Before the legal change in 1997, the police focused its attention on "dispute settlement" and "de-escalation": in very severe cases, police officers counseled the women to leave the house and try to find protection somewhere else.[3] Since 1997, the law does not consider violence against women in the domestic sphere as a merely social problem where the State cannot interfere because of the sanctity of the privacy of the family, but as a violation of fundamental rights which the State has to prevent, to provide protection and to punish perpetrators.

• Fighting Gender Based Violence as an expression of unequal power relations

The approach to violence has changed fundamentally: Whereas before the Anti-Violence Act, the police was targeting a situation of violence, the tools provided for in the Anti-Violence act aim at the violent relationship, by providing for longer term measures, allowing the affected women to escape the violent relationship.[4] The concept of the law is to provide security not so much through measures that tend to foster the women's vulnerability, but rather by empowering them to protect themselves on a long term basis: this includes, among others, the ban of the perpetrator from the living environment of the woman through eviction and barring orders, in order to allow her to change her situation and also, the partial counseling by the intervention centers.[5]

2) Tools provided by the Anti-Violence Legislation

• Eviction order and barring order according to § 38a Security Police Act[6]

The Austrian Anti-Violence legislation empowers the police to ban a dangerous person with an eviction order, ("Wegweisung", § 38a (1) Security Police Act), and to issue a barring order, in order to ban him from the residence and its immediate surroundings ("Betretungsverbot", §°38a (2)) Security Police Act) he is cohabitating with the endangered person, if specific facts (for example, previous acts of violence) make it appear likely that a person living in the residence has to fear that he attacks his/her life, health or

freedom. The scope of the protection is very wide: the beneficiaries of the ban can be all persons living in the residence: not only the wife, but also the life partner, children, other family members, but also tenants and any other cohabitants.

Equally, barring orders can be issued against any person endangering the person to be protected.

The barring order is issued for two weeks (before the entry into force of the second Anti-Violence act on 1. June 2009, it was only ten days) and the police has to check during the first three days whether it is respected. If in the course of these two weeks, there is an application to have a protective injunction order at the court, the barring order by the police is extended to a maximum period of four weeks in total.

Non-compliance with the barring order constitutes an administrative offence and is to be punished with a fine or a subsidiary prison sentence of 2 weeks (§ 84 (1) SPG). Additionally, if the perpetrator threatens or actually harms the person at risk, he is to be punished according to criminal law.

In its annual report of 2011,[7] the Vienna Intervention Center (see further below) assessed the barring order as being a very useful tool for the protection of victims – unless the perpetrator is particularly dangerous: The report stated that several cases of femicide could not be prevented by the barring orders, and it comes to the conclusion that this measure is not suitable as an alternative for arresting dangerous perpetrators. This has been shown in the cases of Fatma Yildirim and Sahide Gökce[8] in front of the CEDAW Committee: the conclusion was that the rights of the perpetrator cannot be given more consideration that the safety of the victim, their rights to freedom, life and physical integrity[9]. Unfortunately, a recent example of a femicide case in Vienna reveals again that women who are threatened by perpetrators who have been identified as dangerous (and against whom barring orders may have already been issued) cannot be adequately protected without arresting the perpetrators[10].

In cases with a lesser degree of danger, a barring order can be a very valuable tool, however. On the other hand, a study on "high risk victims" noted that in the studied cases of "high risk victims", barring orders were scarce, and also, were combined with mediation. In these cases, it can be assumed that the risk assessment has not been conducted with due diligence.[11]

• Creation of the Intervention Center against Violence/Anti-Violence Centers

Also, the Anti-Violence Act provided for the provision of a suitable victim's support institution. As a consequence, in every Federal State of Austria, Anti-Violence institutions (called "Intervention Center against Violence in the Family" or "Anti-Violence Centers") have been established.

These institutions are State funded and their function is to support and empower victims of domestic violence and stalking. The activities of the Intervention Centers/Anti-Violence Centers include the following:

Whenever the police issues a barring order the police is also required to notify the Intervention Center/Anti-Violence Center, which then proactively contacts the person at risk in order to offer assistance (this mainly includes legal assistance, establishing a security plan and psychosocial support)[12]. A proactive attitude constitutes a great support, especially for women under high risk of violence, who, according to the findings of the "High Risk Victim's Study", usually do not initiate contact with support services.[13]

Persons at risk of domestic violence or stalking are also free to contact an Anti-Violence Center/Intervention Center directly, without previous intervention of the police.[14]

The effectiveness of the service lies in the Intervention Centers's approach in that pro-active support and help are offered: the victims appreciate that they do not have to take the initiative to seek help, which is a great relief for many. Another important feature is the strong cooperation between the Intervention Centers, the police, justice and other actors in order to coordinate assistance. Third, the Intervention Center model ensures that victims receive quickly, after police intervention, adequate and professional assistance, which is tailored to the needs of the victims.[15]

According to the annual report of the Vienna Intervention Center of 2011[16], the Vienna Intervention Center has assisted 5.574 persons affected by violence in the family in 2011. The report states that the Vienna Intervention Center has received 3.799 reports from the police and 3.303 barring orders have been placed. It was also noted that 88,1% of the victims were female, and that 3.567 children were affected by violence.[17]

• Protection Orders/Injunction Orders by Civil Courts (§§ 382b, 382e and 382g of the Austrian Enforcement Proceedings Act (Exekutionsordnung - EO))

If further protection going beyond the two weeks of the barring order of the police is needed, the endangered person has the opportunity to file an application for an injunction order ("Einstweilige Verfügung") with the court. According to their needs, the following options are possible:

- Prohibition to enter the residence (§ 382b Enforcement Proceedings Act) and/or

- Prohibition to be at certain places and to enter in contact with the potential victim ("General Protection against Violence", § 382e Enforcement Proceedings Act, and/or

- Prohibition to undertake any infringement of the endangered person's private sphere (§ 382g Enforcement Proceedings Act).

The Protection according the injunction protection against violence in the residence, and also the injunction "general protection against violence" is, since the 2nd Anti-Violence Act of 2009, not only available for close family members, but also to all persons living in the residence, respectively, to all persons with whom a potential contact with the perpetrator would be harmful. The protection can be set for a period up to a year, and, in case of an infringement on the part of the perpetrator, this period can also be extended. For the time being, violations of the injunction orders based on the EO cannot be sanctioned by criminal or administrative law. In order to close this gap the amending bill proposes to classify a violation of an injunction order as an administrative

offence, punishable by a fine of max. 500 Euro, or a subsidiary arrest of maximum two weeks.[18]

The injunction order by the court and the barring order by the police are not interdependent, they can be applied for independently. According to § 38 (4) Security Police Act, the police is obliged to inform the endangered person to apply for an injunction according to § 382b and § 382e EO and provide information on victim's service institutions (the Intervention Centers and Anti-Violence Centers).

In conclusion, the Austrian Anti-Violence Legislation offers valuable tools to fight violence against women and their children. The Austrian approach has been a model for at least 18 countries in Europe, not only regarding the model of police barring orders, but also the support victims receive from the intervention centers/ Anti-Violence centers.[19] In addition, with the forthcoming reform of the Police Security Act, some of the gaps in protection could be closed. However, the effective protection of women facing violence is dependent on the diligent and effective implementation of the law by all involved actors.

[1] See the website of the Bundeskanzleramt (Bundesministerin für Frauen und Öffentlicher Dienst) http://www.bka.gv.at/site/6770/default.aspx (in German).
[2] Regierungsvorlage (Law Proposal of the Government): Federal Law to amend the Security Police Act and to declare certain preliminary injunctions for violence protection (…) to be administrative infringements (SPG-Novelle 2013), 2434 of the Addendums to the Stenographic Protocols of the National Council, XXIV. Legislation Period, www. parlament.gv.at (in German).
[3] See Dearing/Haller, Schutz vor Gewalt in der Familie. Das österreichische Gewaltschutzgesetz (2005), p.27.
[4] See ibid, p. 37.
[5] See ibid, p. 100.
[6] Website of the Minister for Women and Public Service, http://www.bka.gv.at/site/5526/default.aspx (in German).
[7] Logar, 15 Jahre Gewaltschutzgesetze in Österreich – Entstehungsgeschichte aus der Sicht einer Pionierin, in: Wiener Interventionsstelle gegen Gewalt in der Familie, Tätigkeitsbericht 2011, p. 18.
[8] Committee on the Elimination of Discrimination against women, case of Fatma Yildirim (deceased) v. Austria, communication No. 6/2005, UN Doc. CEDAW/C/39/D/6/2005 (1 October 2007), and case of Sahide Goekce (deceased) v. Austria, Communication No. 5/2005, UN Doc. CEDAW/C/39/D/5/2005 (6 August 2007).
[9] See Logar, 15 Jahre Gewaltschutzgesetze – Tätigkeitsbericht 2011, p. 18. See also Committee on the Elimination of Discrimination against Women, Goekce v. Austria, consideration 12.1.5.
[10] See an article from 20 June 2013 in the web edition of the daily newspaper "Die Presse" about a case where a man murders his wife in front of their child: http://diepresse.com/home/panorama/oesterreich/1420767/Mann-ersticht-NochEhefrau-vor-den-Augen-des-Kindes.
[11] Bundeskanzleramt/Bundesministerin für Frauen und öffentlicher Dienst, Birgitt Haller, „High Risk Victims" – Tötungsdelikte in Beziehungen. Verurteilungen 2008-2010 (2012), 60.
[12] Website of the Minister for Women and Public Service, http://www.bka.gv.at/site/5526/default.aspx (in German).
[13] BKA/Bundesministerin für Frauen und öffentlicher Dienst, „High Risk Victims" Tötungsdelikte in Beziehungen. Verurteilungen 2008-2010 (2012), p.62.
[14] Website of the Minister for Women and Public Service, http://www.bka.gv.at/site/5526/default.aspx (in German).
[15] Logar, 15 Jahre Gewaltschutzgesetze in Österreich, Entstehungsgeschichte aus der Sicht einer Pionierin, in Wiener Interventionsstelle gegen Gewalt in der Familie, Tätigkeitsbericht 2011, p.18.
[16] Wiener Interventionsstelle gegen Gewalt in der Familie, Tätigkeitsbericht 2011, p. 10
[17] Ibid, p. 10
[18] Regierungsvorlage, 2434 of the Supplements to the Stenographic Protocols of the National Council, XXIV legislative period, www.parlament.gv.at.
[19] Logar, 15 Jahre Gewaltschutzgesetze in Österreich. Entstehungsgeschichte aus der Sicht einer Pionierin, in: Wiener Interventionsstelle gegen Gewalt in der Familie, Tätigkeitsbericht 2011, p. 18.

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"THE DUTCH LAW ON TEMPORARY RESTRAINING ORDERS" – A PRACTICAL EXAMPLE

by Mirjam Nobel, the Netherlands

On first of January 2009, the "Temporary Restraining Order Act" ("tijdelijk huisverbod")[1] entered into force allowing Mayors[2] to impose a ten-day restraining order on potential perpetrators of domestic violence. This restraining order, which may be extended up to 28 days, prohibits the perpetrator to enter his or her house as well as to contact the persons staying behind in the home (partner, children, or other members of the household). In order to impose a temporary restraining order, risk factors relating to the perpetrator, the incident, and the family have to be assessed using a domestic violence risk assessment tool (RiHG). In the area of The Hague, this process takes place in consultation with counsellors from the crisis division of Social Services and, if necessary, the Youth Care Agency. The Assistant Public Prosecutor has a mandate to impose a temporary restraining order on behalf of the Mayor. This is an administrative measure, in addition to possible criminal measures. A violation of the restraining order is a criminal offence[3]. If a person wishes to appeal the restraining order, this appeal can be submitted to the court.

With its expertise, experience and its coordinating role, the "Steunpunt Huiselijk Geweld" (Advice for victims domestic violence support centre) in the area of The Hague is an important player in tackling domestic violence and carrying out the restraining order. After the restraining order is imposed, all members of the family are offered support. The perpetrator will receive support from the probation service, and those staying behind are supported by Social Services, and the Youth Care Agency is involved for any minors. The Steunpunt will ensure that the assistance is coordinated and that a system-oriented and solution-focused approach is used. The Steunpunt will advise the Mayor about whether a restraining order can expire after ten days or whether it needs to be extended.

Our approach

In Australia, the solution-focused approach "Signs of Safety" has been developed to prioritise safety within families. Three years ago, the Steunpunt worked with the municipality of The Hague and its chain partners in the area to introduce this method within the restraining order. All family members speak to a counsellor separately, about both the concerns and the strengths within the family. Concrete agreements are made about improving the safety. The children will draw pictures of three houses: the "fun house", the "house of the concerns" and finally the "dream house". At the end of the ten days of the restraining order, the family members will talk to each other, with the assistance of counsellors. This conversation will allow all family members to be heard and supported in order to

Mirjam Nobel
is a staff member at the Steunpunt Huiselijk Geweld [Domestic Violence Support Service] in the region of The Hague.

The Steunpunt Huiselijk Geweld is part of Stichting Wende. The organisation focuses on tackling domestic violence by offering shelter to its victims (men/women and children) and ambulatory assistance. In addition to assistance, the organisation also offers support in the chain approach to domestic violence by coordinating assistance. It has specific expertise in the area of restraining orders, elder abuse and honour-related violence.

Mirjam Nobel offers support in the preparation and development of operational policy and activities in the area of the quality of service such as the implementation of new methods.

E-Mail: info@stichtingwende.nl

increase the safety. The solutions put forward are important in the advice to the Mayor[4] regarding the extension or lifting of the temporary restraining order.

At 'Steunpunt', we have noticed that "Signs of Safety" within the restraining order has a positive effect on increasing the responsibility taken by the family members[5]. The word "family" also covers "partners without children" here. From our experience, this approach appears to connect counsellors from different organisations, so that the same message is given to all family members and the same principles are used. This has helped to strengthen the system-oriented approach, because at the start of the restraining order the assistance is divided and everyone gets their own separate counsellor. An important element of "Signs of Safety" is the involvement of the social network around the family. Not only the counsellors ensure that agreements are kept; the key figures in the network can also support the family members. This could be an involved neighbour, a family member, mutual friends, parents of classmates, etc. By breaking the taboo, the family members can talk freely about the situation at home. The social network is an important signal for the family and support agencies, to monitor the safety. In the model used in The Hague, an important task is the coordination with follow-up assistance and the social network after the restraining order has ended. We find that making agreements and involving the social network requires more time and attention than is feasible within the period of the restraining order. The same goes for addressing related problems such as addiction, mental health problems, unemployment or debt. We initiate the necessary assistance and come to concrete agreements about follow-up steps to increase the safety within the family.

A global overview to get an idea of what is happening in our area[6]:

In 2012, 338 restraining orders were imposed in the area of The Hague, population: 772,893.

- 98% of the perpetrators were male
- 65% were partners with minor children
- 50% of those staying behind were previously known to a support agency
- 40% of the perpetrators were previously known to a support agency
- 15% of the perpetrators suffered from a recognised mental health problem
- 37% of the perpetrators suffered from a recognised addiction problem
- 86% of those staying behind reported the perpetrator to the police
- 76% of the perpetrators accepted help during the restraining order
- 89% of those staying behind accepted help during the restraining order
- 9% of the perpetrators appealed the restraining order in court
- 50% of the partners separated after the restraining order
- 40% of the partners continued their relationship after the re straining order - 10% is unknown
- 58% of the restraining orders were extended after 10 days

Impact of the law

Too little research has been done into impact assessment in order to provide information about the results achieved in our area based on reliable statistics. However, we can highlight some issues based on our experience.

Although the law initially seemed suitable for preventive use, its impact on prevention is still quite low in practice. The court rulings that test the imposition reveal that it is difficult to show the validity of the effect. This is because cases where preventive action is taken typically are cases[7] involving little or no physical injury and because partners contradict each other. In these cases, there have to be several signs that show that a time-out in the form of a restraining order is necessary. We advocate a more preventive use of the restraining order, because experience has shown that the intended shock effect does result in a clear motivation in partners to change the situation.

Since the introduction of the law, we have seen complicated cases arise, where the restraining order is combined with criminal law measures. Punishment according to criminal law can re-enforce a temporary restraining order, for example a probation period, suspended sentences or compulsory treatment. After arrest or detention a temporary restraining order can also be a useful supplement. The combination of criminal law measures and temporary restraining orders can be conducive to the success of the offer of assistance.

Although in most cases, it is the man who has to leave the house, when giving support we have noticed that there are often complex problems of disturbed communication between both partners. An example of these problems is what we call "intimate terrorism". In many cases of 'intimate terrorism' you can almost speak of two perpetrators. Our figures show that 50% of the partners decide to separate after the restraining order. Further investigation should reveal whether the accent in our approach might be too much on the role of the perpetrator instead of on both parties. Most men/persons who were under a temporary restraining order, feel punished and offended by this order. We think that the theory of 'intimate terrorism' proofs that the order sometimes has to affect both partners. In our approach to the family members we try to reach out to all of them.

In situations where the strong dependence of the partner and the seriousness of the violence play a major part, it is sometimes

unavoidable to advise the person staying behind to go to a shelter as well. Especially in situations where the counsellors cannot get in contact with the perpetrator and where previous support has been refused or stagnated. The expectation was that with the introduction of the temporary restraining order, the need for shelters would decline. This is certainly not the case in our area.

A new development since the introduction of the law is the use of the restraining order in cases of child abuse by one of the parents. In these situations, the non-violent parent is typically incapable of putting the child's safety first. In most cases, removing the child from the home is very invasive and undesirable. Through the use of the temporary restraining order for the abusive parent, the counsellors have at least 10 days to involve the network and to come up with a joint plan on how to guarantee the child's safety.

After almost four years of best practise, we can conclude that the temporary restraining order has proved its value in the approach of domestic violence. With this instrument we can get behind closed doors and state that domestic violence is a public matter. The temporary restraining order gives us the opportunity to interfere very quickly with a sincere impact to all family members. We have also experienced an important progress by reaching out to adults and children we couldn't reach before.

Although we are positive about the value of the 'temorary restraining order', we would recommend to set up an inquiry on the effects on all family members, including children and the perpetrator, and the effects in the long run.

[1] Ministry of Justice The Netherlands WWW user survey (n.d.). Retrieved June 17, 2013 from http://www.huiselijkgeweld.nl/doc/huisverbod/anderetalen/anderetalen/13870_Huisverbod_EN.pdf

[2] The Dutch Mayor has the authority over the police department in the city.

[3] A court commissioner decides if the police can take the perpetrator into custody or can impose conditional probation. In case of a substantial violation a judge can impose imprisonment.

[4] The Dutch Mayor decides whether the temporary restraining order has to extend after 10 day into 28 days ultimately.

[5] Parents, adult children or other members of the household.

[6] All figures are retrieved from the registration data of "Steunpunt Huiselijk Geweld".

[7] The judge has to decide whether the temporary restraining order is appropriate related to the impact. Despite of the fact that the perpetrator usually did not commit a legal offense, the person has to leave the house and cannot be in touch with the children and the other members of the household. It is a difficult choice when there is no plausible evidence of a serious treat, because both partners accuse each other.

TACKLING VIOLENCE AGAINST WOMEN IN SERBIA – THE LEGAL FRAMEWORK AND ITS IMPLEMENTATION

by Tanja Ignjatovic and Danijela Pesic, Serbia

The Republic of Serbia does show interest in solving the problem of violence against women, but the implementation of the adopted measures for combating and preventing violence against women continues to be very deficient, as it testifies on the lack of clear political response to this problem. The analysis of the legislative and strategic framework of the Republic of Serbia related to women's rights[1] shows two key problems: first, the inadequate recognition of women and vulnerable groups of women, including women victims of violence, as subjects of rights and secondly, the absence of a coherent framework for implementation and reporting on implementation.[2]

Danijela Pesic
is a social worker and project assistant in Autonomous Women's Centre. Currently she is enrolled in the MA in Social Policy at the Faculty of Political Sciences of the University of Belgrade. From 2006-2009 she was peer-educator on gender-based violence. Since 2010 she has been engaged in policy analysis in the field of domestic violence against women.

Email: danijelap@azc.org.rs

Protection against domestic violence in Serbia is regulated by the Family Law[3] and the Criminal Code[4]. Family Law strictly prohibits domestic violence and it recognizes the right of each family member to protection. From the available data[5] it can however be concluded that the authorized institutions for filing civil suits for issuance of protection measures against domestic violence prescribed by the Family Law (public prosecution and centre for social welfare), do not make use of their legal authorizations. All Centres for Social Work in Serbia, as compared to 8,481 identified victims of violence in 2011, filed only 294 suits for the issuance of protection measures in that year. As far as Public Prosecutor's Offices are concerned, only 6 of them (out of 58) filed civil suits in 2011. Although the protection measures should be issued in an urgent procedure, in approximately 40% of cases more than two court hearings are held and delayed hearings is common practice. Only in 20,4% of the cases, the judgment is reached within one month after filling a civil suit, and a significant number of judgments are issued after three or even six months, which reflects the inefficiency of court proceedings that stultifies the intended purpose of these measures[6]. The violation of protection measures is a criminal act, but the criminal procedure lasts too long. In the police records for 2011, only 14 criminal charges for violation of protection measures against domestic violence (total of 787 measures was issued in that year) were recorded, which may be an indication for police officers' lack of sensitivity to the problem[7]. The court is not obliged to forward judgments on the issued protection measures to the police, which should monitor violations of issued measures. All of this leads to an additional risk to the victims of violence.

The definition of the family members, whom should be granted protection from domestic violence, is much narrower in the Criminal Code than in the Family Law, which reduces the possibility of criminal law protection of the victims. In one third of procedures for the crime of domestic violence, public prosecutors dismiss the charges. The length of the procedure frame from the moment of filing a criminal charge to the first instance decision and the moment it becomes final is unacceptably long – from 7 months to one year[8]. Criminal sanctions imposed in the first instance trials show a tendency of lenient penal policy: 66,6% of

Tanja Ignjatovic
is a psychologist and project coordinator in Autonomous Women's Centre, responsible for creating training programs for professionals in relevant public services, developing educational materials, articles for professional publications and policy analysis. Currently she is enrolled in the PhD program at the Faculty of Political Sciences of the University of Belgrade.

Email: tanja@azc.org.rs

sanctions were "suspended" sentences (i.e., prison sentences that cannot be executed within a certain period if the perpetrator does not repeat the criminal offence), 3,3% were fines, 21,6% prison sentences, 6,9% security measures and 1,6% were court warnings. Prison sentences usually last 4 months. In the Criminal Code there are no criminal offences of harassment or stalking (by a family member, current or former partner), despite the fact that this phenomenon is very widespread (18,6% of polled women)[9]. Experience of stalking endures also women who have never been either in emotional or sexual relationship with the stalker, and sometimes they end up being killed by their stalkers.

The issue of increasing number of women killed in the family context remains of concern. In the period from 2007 to 2010, the proportion of women in the total number of victims of serious homicides increased from 28% to 43%[10]. In 2012, 32 women were killed and for the first three months of 2013 – 11 women lost their lives in a family context[11]. There are no official data, since state statistics do not disaggregate the data by the type of relationship (family ties) between victims and their murderers. Police didn't have defined procedures for risk assessment and in 2011 two policemen got killed while intervening in domestic violence situations. Until recently proposals of women's groups to establish specialization of police officers and standardize risk assessment and management list have been repeatedly rejected. Although the recently adopted Special Protocol on Action of Police Officers in Cases of Domestic and Intimate Partner Violence against Women, a specific regulation for police officers but a non-legally binding document, includes the list of the most common risks, it is very important to monitor whether it is consistently implemented.

Despite the fact that in 2009, the severity of punishments for domestic violence increased and monetary fine was abolished, the impact of civil society in legislative changes is still insignificant. Autonomous Women's Centre (AWC)[12] submitted 24 proposals for amendments to the Criminal Code with the aim to ensure adequate institutional mechanisms for the protection of children and women against all forms of violence in accordance with international standards. Also, proposals for amendments to the Criminal Procedure Code, all of them aiming at the adoption of new measures ensuring the rights of particularly vulnerable categories of victims, were submitted in 2011. None of these amendments has been adopted. Therefore, it can be concluded that there is a strong political resistance against acceptance of international standards (for example: Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse; Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence) within criminal protection of the victims.

It is essential to harmonize the Criminal Code definition of family members with the definition in the Family Law, to adopt stalking or harassment as criminal acts and to improve definitions of criminal acts and protection of women from all forms of violence. As the first legally binding international document in Europe, the Convention on Preventing and Combating Violence against Women and Domestic Violence ("Istanbul Convention") is a framework for future legislative and strategic changes in Serbia in the field of prevention of violence against women, victim protection and punishment of perpetrators. The Convention was signed in April 2012 but has not been ratified by the Serbian Government yet[13].

Providing effective and consistent implementation and enforcement of laws and measures, and ensuring efficient court proceedings with a systematic psycho-social support for victims of violence in the Republic of Serbia is the greatest challenge, which will continue to be topical in the future. Additional efforts and government accountability will be needed, as well as better understanding of the needs of women victims of violence. In regard to international standards, it is very important to ratify the Istanbul Convention, and ensure harmonization of national legislation with the international laws and recommendations. AWC is implementing the joint project "Coordinated efforts - Toward new European standards in protection of women from gender based violence"[14], which is focused on the ratification and full implementation of the Istanbul Convention, as well as harmonisation of national laws and policies with its provisions.

[1] The analysis was conducted in 2011. Results of the analysis are available at: http://www.socijalna-kohezija.womenngo.org.rs/images/pdf/sr/The_poverty_risks_of_women_who_have_experienced_violence_-_initiatives_for_improving_social_inclusion_policy_-_Executive_Summary_and_Recommendations.pdf

[2] Ignjatovic and Pesic, The poverty risks of women who have experienced violence - initiatives for improving social inclusion policy, 2012, p. 3.

[3] Official Gazette of the Republic of Serbia, No. 18/05.

[4] Official Gazette of the Republic of Serbia, No.: 85/05, 88/05, 107/05, 72/09, 111/09.

[5] Republic Institute for Social Protection, Report on the work of centres for social protection in Serbia in 2011, 2012, Belgrade.

[6] Petrusic and Konstatitovic-Vilic, Family law protection from domestic violence in the practice of courts in Serbia, 2010, p. 99 and 100.

[7] Ignjatovic, The problem of poverty and social exclusion of women who have experienced violence in partner relationship, 2013 (in print).

[8] Konstatinovic-Vilic and Petrusic, Criminal act of domestic violence: Current judicial practice in Belgrade and Nis, 2007, pg. 51-53

[9] Nikolic-Ristanovic, Domestic violence in Vojvodina, 2010, p. 26.

[10] Statistical Office of the Republic of Serbia, Women and men in the Republic of Serbia, 2011,p. 91.

[11] Network Women against Violence, Report on femicide in Serbia, 2012, p. 2.

[12] Autonomous Women's Centre is a specialised nongovernmental organisation from Belgrade, Republic of Serbia, which since 1993 has been addressing the issues of violence against women in intimate relationships and domestic violence.

[13] As of 12. June 2013; The ratification process is however ongoing.

[14] The project is funded by the European Union. More information on the project is available at www.womenngo.org.rs.

A CODE TO OPEN OUR EYES?

by Carlijn Weijns, the Netherlands

In the Blijf Groep's shelters we see a lot of women who have been affected by domestic violence for a minimum period of eight years. Many of these women tell us that they had visited a general practitioner, an infant welfare centre, a paediatrician, but that none of the professionals have asked if there was something going on at home. If no one asks, why would they tell? Not only women fear to speak about the violence in their homes. Parents in general have the idea that if they speak about the domestic violence their children experience, that the Advice and Reporting Centre for Child Abuse and Neglect would start to investigate the home situation and could decide that it is not safe for the children to live at home. This fear is not always realistic but stems from the fact that domestic violence and child abuse is still very much a taboo.

In July 2013 a law will be introduced that requires organizations and independent professionals to adhere to a "code "for reporting all forms of domestic violence and child abuse.[1] This includes sexual violence, female genital mutilation, "honour"-based violence, and senior abuse. The 'reporting code domestic violence and child abuse' is a five step action plan for responding to signs of domestic violence and child abuse. The purpose of the law is that faster and more appropriate interventions can be executed in cases of suspicion of domestic violence and child abuse, to be able to avoid more victims of domestic violence and child abuse in the future .By discussing their suspicions with both other professionals as well as with their clients, professionals assisting women and their children affected by domestic violence are in a better position to assess the signals.

We know that professionals are not always able to see and recognize the signals of violence and abuse and if they do, they often don't know how to respond to it. A solution to this challenge could be achieved by consistently using the code report, which helps professionals to take effective action responding to early signs of domestic violence and child abuse. In 2008, Dutch ministers proposed the reporting code. Why does it take five years for a bill to get into force whit such an important aim? Currently the Netherlands faces 200,000 victims[2] of severe domestic violence every year, all of them are women. Thereby it is the most extensive form of violence in our society.

The reason for the delay can be found in the discussions about the question whether to rather install a reporting obligation instead of a reporting code, as in Belgium, the United States or Canada. The difference between the two approaches is that professionals with a reporting obligation are required to file a report so that the situation can be further investigated. This obligation does not exist for the reporting code. Research shows that Belgian professionals are pleased with the reporting obligation as permission from the client before contacting assistance is no longer necessary. When a general practitioner is seriously worried, immediate action can be taken. The right to remain silent and professional secrecy is replaced by the right to speak. A downside however is that there may be unnecessary reports and the quality of the assistance to the victim is therefore not guaranteed. Also many professionals in the child care sector are afraid to falsely blame the parents and to lose their confidence, with the possible consequence that they lose sight of the family and that problems deteriorate. Therefore the Netherlands decided to choose the report code and to train the professionals to recognize signs of domestic violence and child abuse at an early stage. The report code requirement will apply to all organizations and independent professionals in education, healthcare, child care, youth care, social work, and the criminal justice system. In order to diminish the gaps between the several professional fields the Dutch government chose to include all professional fields.

In Rotterdam, the biggest Dutch harbour, professionals have already worked with the reporting code for several years. Research showed that professionals who work with the reporting code discuss their suspicions of domestic violence three times more with other professionals. By discussing their suspicions with both other professionals as well as with their clients, they are better able to assess the signals. Professionals have to talk about it, share their concerns and assess the violence and child abuse. With the introduction of this code, professionals can no longer look away.

Professionals are required to develop a five step reporting code based on the following model

Step 1: identifying the signals

Step 2: peer consultation and, if necessary, consultation with the Advice and Reporting Centre for Child Abuse and Neglect or the Domestic Violence Advice and Support Centre

Step 3: interview with the client.

Step 4: assessing violence and child abuse

Step 5: reaching a decision: organizing or reporting assistance

The decision whether or not to report suspicions of domestic violence and child abuse is up to the professional, the roadmap of the reporting code offers him the necessary guidance.

In my work as a social worker, I have seen lots of cases of domestic violence against women. Many times I have asked myself why it took years and years before somebody's alarm bell rang. Often the answer lies in the fact that professionals did not know how to open the conversation about the concern of the abuse. They fear to ask the question; "are you abused?" So they chose not to speak about it, with sometimes major consequences for all involved. Women keep carrying on their lives keeping the abuse as a secret, and as time passes, their situation gets more and more problematic and their fear to speak grows. At Blijf Groep we talk with the women about their own abuse and about intergenerational transmission. They might have dealt with violence when they where a child and they recognize the same patterns in there life. It is important to know how that experience has affected them. We also talk with them about the position of their own

Carlijn Weijns has worked for several years in a shelter home for young children with psychological and behavioral problems and their parents after her study social work. Currently, she is working as a work advisor/trainer at Blijf Groep. She leads the implementation of the Meldcode. Blijf Groep has 8 shelters and also provides help a at home in several cities in the Netherlands.

Email: C.Weijns@blijfgroep.nl

children and how the violence has taken place in there lives. We want the women to be aware of there own patterns and teach them how they can change those.

We hope that with the introduction of the law making the reporting code a compulsory tool, the professionals will be enabled to address more cases of domestic violence and child abuse in an early stage. We can just no longer close our eyes.

[1] The „Model Reporting Code", a guide intended for officials in institutions, practices and other organizations charged with drawing up a reporting code, published before the entering into force of the new law in order to allow the organizations concerned to be prepared, is available on the website of the Dutch Government: http://www.government.nl/documents-and-publications/reports/2013/03/14/model-reporting-code-domestic-violence-and-child-abuse.html.

[2] Movisie, Factsheet Domestic Violence, nature and extent, effects, assistance and approach. May 2011.

NEW LEGISLATION TO END VIOLENCE AGAINST WOMEN IN WALES (UK)

by Paula Hardy and Hannah Austin, UK

Background

This year, Welsh Women's Aid and the violence against women and girls (VAWG) sector in Wales has a lot to celebrate – and a lot of hard work ahead.

In 2011, following a referendum in which the Welsh Government won primary law-making powers for the first time, the First Minister announced the Welsh Government's legislative programme – including the introduction of a Domestic Abuse Bill. We welcomed this announcement, albeit with some trepidation that the title was limited to domestic abuse. Following concerted lobbying by the VAWG sector in Wales, we have since received reassurance that the legislation will cover all forms of violence against women.

Given that the Welsh Government only introduced their first national strategy to tackle VAWG in 2010, the announcement of a law to tackle this issue in their first legislative programme is a huge success for VAWG organisations in Wales.

Priorities of the VAWG sector in Wales

Welsh Women's Aid has consulted with our membership (grassroots domestic abuse support service providers across Wales) and with the specialist VAWG sector across Wales to develop six key priority outcomes that we believe the new legislation must deliver:

1. Reduction in the prevalence of **all** forms of violence against women, and support for women who experience such violence;

2. Equal access to specialist support services for women across Wales;

3. Compulsory initiatives in schools and other educational settings to prevent violence against women before it starts, and for supporting pupils affected by such violence;

4. Appropriate and timely interventions, referrals and signposting as a result of improved health responses to violence against women

5. Employers know how to help female employees affected by violence against women.

We are working hard to make sure that the legislation delivers all of these outcomes. For detailed briefings on each priority, visit our website: www.welshwomensaid.org or read the latest report of the Wales Violence Against Women Action Group on their website: www.walesvawgroup.com.

Positive signs

The Welsh Government published a White Paper in November 2012 for a public consultation, which outlined their proposals for the contents of the new legislation. We were delighted that these proposals included action to deliver a number of our above priorities, with particular highlights being:

- Appointing an Independent Ministerial Advisor for Ending VAW;
- Requiring local authorities and services to develop local and regional strategies to reduce VAW;
- Requiring that education on healthy relationships be delivered in all schools;
- Requiring local authorities to identify a regional 'Ending VAW Champion' to promote whole-school approaches in educational settings;
- Introducing a National Training Framework on VAW for key professionals;
- Placing a duty on public sector employers to have a work place VAW policy in place;
- Placing a duty on key professionals to 'Ask and Act' in relation to VAW;

Hannah Austin
has been Policy & Campaigns Officer at Welsh Women's Aid for four years. In 2009, she founded the Wales Violence Against Women Action Group, which she continues to coordinate. Prior to Welsh Women's Aid she worked at Wales Women's National Coalition. Hannah is also involved in grassroots feminist activism; she founded Cardiff Feminist Network in 2011 and Abortion Rights Cardiff earlier this year.

Email: HannahAustin@welshwomensaid.org.uk

Paula Hardy
has been the CEO for Welsh Women's Aid since 2008. Under her leadership Welsh Women's Aid has seen substantial developments in relation to the VAWG agenda in Wales, she continues to be a driving force behind campaigns to ensure that the Welsh Government recognises and takes action to address the continuing inequality faced by women in Wales specifically in relation to VaW.

Email: PaulaHardy@welshwomensaid.org.uk

- Requiring local authorities to provide a spectrum of safe accommodation options, informed by risk assessment and service user choice.

Key challenges

However, there is still some work to be done in a number of areas to make sure the legislation is as good as it can possibly be. We have three key concerns at the current proposals:

1. Gender specificity

The White Paper implied that the legislation will include men, and was entitled 'Consultation on legislation to end violence against women, domestic abuse and sexual violence' – strangely implying that domestic abuse and sexual violence are somehow separate from the overarching problem of violence against women (rather than their most prevalent manifestations). Gender-neutral approaches, of course, do not comply with international definitions (such as CEDAW and the UN Declaration on the Elimination of VAW) or requirements (such as Article 18 of the Council of Europe Convention on preventing and combating violence against women and domestic violence).

Furthermore, The Welsh Government already has policy, strategy and services which mandate the provision of services to male victims. The reason for introducing this particular Bill is in recognition of the fact that women disproportionately experience certain forms of and that therefore stronger action is needed to tackle this, which only legislation can offer. It is vital to situate domestic abuse within the wider context of VAW, and to draw up a specific gendered focus, in order for the legislation to be focused and effective. Too broad a focus will result in the legislation being ineffectual in tackling the very phenomenon that it was intended to tackle – that is, the forms of violence and abuse that women in Wales experience because they are women.

2. Support for children and young people

Whilst we warmly welcomed the White Paper's commitment to preventative measures, including compulsory education on healthy relationships in all schools in Wales and the implementation of whole-school approaches across the board, a glaring omission within the Welsh Government's proposals so far relates to support service provision for children and young people who have already experienced domestic abuse (either as a victim in their own right or within their families). There is a dearth of funding for specialist children's workers in Welsh Women's Aid's members' services in Wales, and the new legislation needs to address this as a priority.

3. Funding and implementing the proposals

There are some truly excellent proposals within the White Paper, and some which we as an organisation and a sector have been campaigning for decades. However, policy and legislation are only ever as good as their implementation, and we are concerned that a lack of identified funding could hamper the delivery of these proposals. We all know that we are operating under difficult economic times, but given the astronomical cost of VAW to society, we believe that investment in effective interventions must be seen as a long-term cost-saving exercise.

And finally, it is currently unclear as to what sanctions will be in place if the legislation is broken. For example, if a local authority fails to fulfil its legal duties to a woman and she comes to further harm as a result, who does she sue? We want to make sure that the legislation 'has teeth' and that it really works for women and their children.

Next steps

The Welsh Government has made excellent progress on the violence against women agenda in recent years, and this new legislation is an opportunity to build upon that progress. For the new Bill to make a concrete difference to women's lives, it must be informed by the priorities, evidence and recommendations provided by the expert VAWG sector in Wales.

Welsh Women's Aid now looks forward to working with the Welsh Government and the National Assembly for Wales Members, who will vote on the Bill. We will keep WAVE updated on opportunities for joint lobbying in this area.

We have to get this right and deliver real improvements for women in Wales. We won't get a second chance.

Fempower

THE UN WOMEN'S RIGHTS CONVENTION – AN INTERNATIONAL FRAMEWORK FOR LEGISLATIVE REFORM TO ELIMINATE VIOLENCE AGAINST WOMEN

by Angelika Kartusch, Austria

Angelika Kartusch joined the WAVE Officer as project manager in 2012. Before, she worked for several years with the Ludwig Boltzmann Institute of Human Rights and the UN Development Fund for Women.
She has also worked as consultant with the UN, OSCE, Council of Europe, the German Institute for Human Rights and a number of NGOs. Angelika has extensive experience in research, legal analysis, training and project management, with a specialization on women's human rights, violence against women and trafficking in human beings. Angelika holds a law degree from the University of Vienna.

Email: angelika.kartusch@wave-network.org
angelika_kartusch@yahoo.de

In 1979, the United Nations (UN) General Assembly adopted the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), a milestone for the recognition of women's right to gender equality. To date, 187 states parties have ratified this legally binding instrument, which entered into force in 1981. Discrimination is defined in Article 1 CEDAW and encompasses both direct and indirect discrimination. Further, states parties are obliged to eliminate gender-based discrimination of women in law ("formal equality") and practice ("substantive equality"). It is also important to note that CEDAW addresses discrimination committed by either state officials or private persons and entities.

Gender-based violence – a form of discrimination

While the Convention addresses a broad range of areas of life in which women experience discrimination, such as political life, employment, the health system or education, it makes no reference to violence against women. This is because in the late 1970s, when the text of CEDAW was negotiated, violence was still considered a taboo, rather than a matter of international human rights law. This gap was closed by the CEDAW Committee, the expert body in charge of monitoring the implementation of the Convention, in 1992, when it issued General Recommendation No. 19 on violence against women (GR 19). This document specifies the obligations of states parties to prevent and respond to violence against women. According to GR 19, gender-based violence (GBV) is a form of discrimination and as such encompassed by the CEDAW's definition of discrimination in Article 1. GBV is understood as violence that is directed against women because they are women or that affects women disproportionately.[1] The Committee further held that GBV may breach specific provisions of the Convention, regardless of whether they expressly mention violence, such as Articles 2 and 3 (overarching obligations to eliminate discrimination),[2] Article 5 (obligation to modify or abolish discriminatory laws, regulations, customs and practices and to eliminate gender stereotypes), Article 11 (obligation to eliminate discrimination in employment), or Article 16 (obligation to eliminate discrimination against women in marriage and family relations).[3] GR 19 also reiterates the obligation of states parties to eliminate violence against women committed in the private sphere through acting with due diligence to prevent, investigate and punish such violence and to provide compensation to victims.[4]

Standards for legislation to address violence against women according to CEDAW

While GR 19 is as such not legally binding, it is a source of authoritative interpretation of the Convention and, through its list of recommendations, provides a comprehensive framework for state action to eliminate GBV. In particular, states should ensure that laws against GBV provide adequate and effective protection to all women and respect their integrity and dignity. This includes criminal sanctions, civil remedies and effective complaint procedures and remedies, including compensation.[5] Recommendations to improve the implementation of existing laws include gender-sensitive training of judges, police and health workers,[6] the establishment or support of services to women victims, such as shelter and counselling,[7] or the assessment of measures as to their effectiveness in preventing and responding to GBV.[8]

Since the entry into force of the Optional Protocol to CEDAW in 2000, which introduced an individual complaints procedure for women claiming to be victims of violations of the Convention, the GR 19 has further guided the development of the Committee's jurisprudence in assessing complaints addressing various forms of violence against women. For instance, the Committee held that the lack of restraining or protection orders to protect women from violent family members (*case A.T. v. Hungary*)[9] or to protect victims of sexual violence from re-victimization, following the release of perpetrators from detention (case *S.V.P. v. Bulgaria*)[10] violated the Convention. In the latter case, the absence of a legal aid scheme and other legal measures to support victims of sexual violence in enfor-

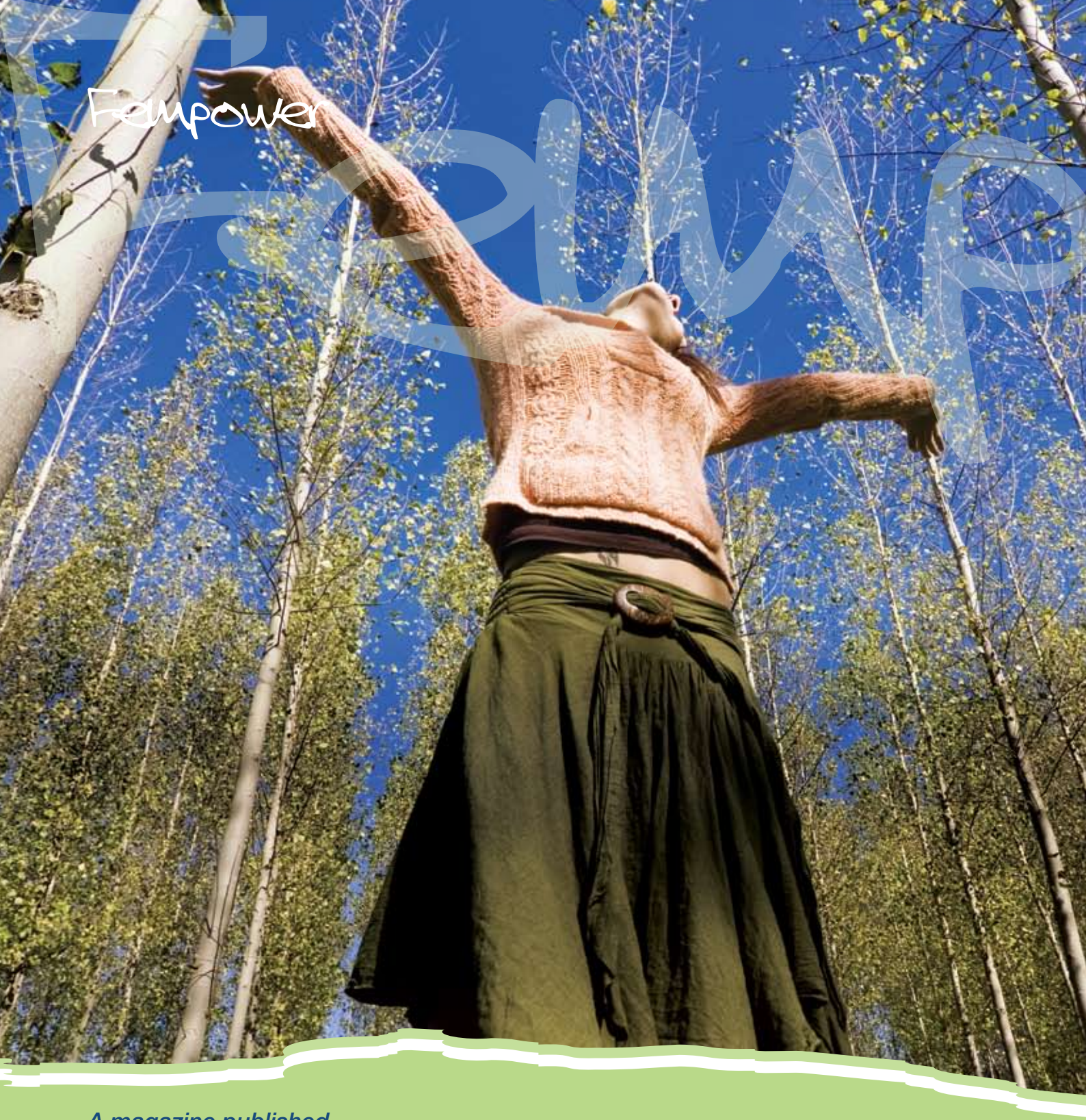
cing civil compensation claims for moral damages against perpetrators was also found in breach of CEDAW.[11] The case of *T.P.F. v. Peru* concerned a girl who got pregnant as result of having been raped; she was severely traumatized and following a suicide attempt suffered spinal damages which required emergency surgery. Her request for therapeutic abortion was denied; a spinal surgery was postponed as the doctors arguably gave priority to the protection of the foetus over the health of the mother. While therapeutic abortion was legal in Peru, there was no legislation in place to regulate access to this service, resulting in hospitals arbitrarily deciding on requirements and procedures. The CEDAW Committee found that Peru had violated CEDAW by failing to put in place an appropriate legal framework to enable women to exercise the right to therapeutic abortion which would guarantee them legal security, for example through providing a mechanism for rapid decision-making and a right to appeal.[12]

As regards the implementation of existing legal frameworks, the Committee in the cases of *Gökce v. Austria and Yildirim v. Austria* underlined that the adoption of laws in itself is not sufficient to fulfil the obligation under the Convention – laws must be effectively applied by authorities that adhere to the standard of due diligence. Both case concerned women who were eventually killed by their violent partners; the failure of the public prosecutor's office to arrest the perpetrators, even though the authorities knew or should have known that the women concerned were in serious danger, constituted a violation of CEDAW.[13] Further, the Committee also dealt with claims of discriminatory interpretation of laws by the judiciary. In *Vertido v. The Philippines*, the defendant was acquitted of rape charges because the judge based her judgement on discriminatory and stereotyped myths about male and female sexuality and the behaviour expected from a "typical" victim, which led the judge to favour the credibility of the defendant over the victim. The Committee found that the state had breached its obligations under CEDAW.[14] A violation of the Convention was also found in *Jallow v. Bulgaria*, where the civil court had issued a protection order against the complainant in favour of her violent husband, relying exclusively on his statements and without taking into consideration her claim that she and their daughter were the ones in need of protection. Neither were her allegations of domestic violence followed by suitable and timely criminal investigations. The Committee also pointed to the fact that the authorities had been aware of Ms Jallow's dependency on her husband, her being an illiterate migrant woman without command of the Bulgarian language or relatives. The authorities had based their activities on the stereotyped notion that the husband was superior and that his opinions should be taken seriously; the state had therefore violated its obligations according to CEDAW.[15]

Conclusion

The CEDAW Committee's GR 19 has brought violence against women, including domestic violence, into the scope of the Convention. As a result, violence against women has become an issue of growing importance in the Committee's jurisprudence. Indeed, in a number of individual complaints, the Committee found violations of states parties to prevent and respond to violence against women and used the opportunity to further specify the respective obligations under the Convention. This development is particularly interesting, given the fact that the actual Convention did not mention violence; it demonstrates the dynamic nature of human rights which are not static, but evolve over time, reflecting cultural and social developments.

[1] CEDAW General Recommendation No. 19 (1992), paras 1, 6.
[2] Article 2 CEDAW establishes a series of legislative obligations od states parties: to embody the principle of gender equality in national law and to ensure its practical application (para. a); to adopt appropriate legislative and other measures including sanctions prohibiting discrimination against women (para. b); to ensure the effective protection of women against discrimination through competent national tribunals and other public institutions (para. c); to refrain from discrimination and to ensure that public authorities act in conformity with this obligation (para. d); to eliminate discrimination against women by private persons or entities (para. e); to take appropriate legislative and other measures to modify or abolish discriminatory laws, regulations, customs (para. f); and to repeal criminal law provisions which constitute discrimination against women (para. g). Further, Article 3 establishes a comprehensive obligation upon state parties to undertake legal and political mea sures to eliminate all forms of discrimination against women "in the political, economic, social, cultural and any other field".
[3] Ibid, paras 10, 17f, 22f.
[4] Ibid, para. 9.
[5] Ibid, para. 24 lit. b, lit. l, lit. r, lit. t (i).
[6] Ibid, para 24 lit. b, lit. k.
[7] Ibid, para 24 lit. k.
[8] Ibid, para 24 lit. c.
[9] A.T. v. Hungary, Communication No. 2/2003, views of 26 January 2005, para 9.4 (violation of articles 5 (a) and 16).
[10] S.V.P. v. Bulgaria, Communication No. 31/2011, views of 12 October 2012, para. 9.7 (violation of article 2 (a), (b), (e), (f), (g), read together with articles 3 and 5).
[11] Ibid, paras 9.2, 9.11 (violation of article 15 (1) in conjunction with article 2 (c) and (e).
[12] T.P.F. v. Peru, Communication No. 22/2009, views of 17 October 2011, para. 8.17 (violation of article 2 lit. c and lit. f).
[13] Gökce v. Austria, Communication No. 5/2005, views of 6 August 2007, paras 12.1.2. 12.1.5f, Yildirim v. Austria, Communication No. 6/2005, views of 6 August 2007, paras 12.1.2, 12.1.4, 12.1.6 (in both cases: violation of article 2 (a), (c)-(f), article 3).
[14] Vertido v. The Philippines, Communication No. 18/2008, views of 16 July 2010, paras 8.5, 8.6, 8.9 (violation of article 2 (c) and (f), article 5 (a).
[15] Jallow v. Bulgaria, Communication No. 32/2011, views of 23 July 2012, paras 8.4-8.6.



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WAVE-Office /
European Information Centre Against Violence

Bacherplatz 10/4, A-1050 Vienna,
Phone: +43-1-5482720
E-mail: office@wave-network.org
Website: http://www.wave-network.org
ZVR: 187612774